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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

S.K.,

Petitioner,

v.

SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent,

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU
et al.,

Real Parties in Interest.

A156590

(Contra Costa County Super. Ct.
Nos. JUVMSJ17-00731, JUVMSJ17-
00732, JUVMSJ1-700733)

After a contested review hearing regarding three dependents, the juvenile court terminated reunification services for S.K. (Mother) and set a Welfare and Institutions Code section 366.26 hearing (.26 hearing).¹ Pursuant to California Rules of Court, rule 8.452, Mother petitions for writ relief, and she also requests a stay of the .26 hearing. We deny Mother's petition, and we deny her request for a stay as moot.

FACTUAL AND PROCEDURAL BACKGROUND

On February 23, 2017, the Butte County Department of Employment & Social Services (Department) filed section 300 petitions on behalf of L.K. (born July 2014); N.K. (born August 2015); and A.K. (born November 2016). The petitions alleged unsafe

¹ All undesignated statutory references are to the Welfare and Institutions Code.

living conditions. (§ 300, subd. (b).) On February 21, 2017, Chico police found “marijuana smoking devices, televisions, mattresses, electronics, wire, bike parts and other sharp objects stacked against the walls creating one thin pathway through the house and all accessible to the child[ren].” The kitchen area contained “garbage, dirty dishes and cockroaches.” The children’s father was alleged to have a substance abuse problem.²

I. Detention, Jurisdiction, and Disposition

The detention report explained that the family was “about to be evicted due to the clutter and the constant stream of strangers in and out of the home.” Social workers observed that in the kitchen there was “enough food to make about two meals. The refrigerator was bare and filthy . . . [and] had not been cleaned for quite some time.”

When a social worker entered the room occupied by the two older children, the worker “was hit with an overwhelming smell of body odor, dirty diapers, spoiled milk and filth. The two children were sitting on the ground in dirty overflowing diapers. The television was on full blast.” The youngest child, A.K., was located in a bedroom lying in the middle of the bed. This bedroom was “again covered with clothing, various items, and electronics.” Mother “had asked a neighbor to watch the children for a few days while they cleaned up the apartment. The neighbor agreed that she would keep them for a few days, however, during this investigation the neighbor admitted that she had been drinking throughout the day.”

Chico police detained the children. During her foster care clearance examination, A.K., who was two months old at the time, “was found to be extremely dirty and had raw areas in the folds of her neck, legs and under her arms.” Every time the door to the room was opened and then closed, N.K., the one year old, “would fall to the floor and cover her head and cry.”

On February 24, 2017, the juvenile court held a detention hearing, detained the three children, and set a jurisdiction hearing. The court authorized out-of-county placement and reasonable visitation for the parents.

² The father is not a party to this proceeding.

Before the jurisdiction hearing, both parents submitted on the petition as amended. On March 23, 2017, the court found the allegations in the amended petitions were sustained by a preponderance of the evidence, and that the children were persons described by section 300, subdivision (b). The court ordered visitation for the parents and scheduled a disposition hearing.

The disposition report, filed April 7, 2017, recommended the children remain in out-of-home care, be ordered dependents of the court, and it recommended reunification services for the parents. It explained that Mother graduated from high school, and was employed at a fast food restaurant from 2006 to 2010, but at the age of 23 she “decided to leave home because she wanted to be more independent,” and she was currently unemployed. The Department stated the parents “clearly love their children.” The parents acknowledged the condition of their home at the time of detention was unacceptable. Mother believed “she has a learning disorder and has difficulty understanding things.” The Department recommended she participate in an assessment.

The parents consistently attended visitation, but the Department observed “the parents struggle with reading the children’s cues resulting in the children becoming inconsolable” During the month of March 2017, Mother tested negative for drug use and she began attending a parent support group. The disposition report concluded the parents “have demonstrated their willingness to address the issues that led to the detention of their children,” but, at this time, the children were in need of the court’s “continued protection.”

On April 13, 2017, the court found the children to be dependents of the court and ordered them removed from the physical custody of their parents. The court ordered family reunification services and visitation.

II. *Transfer to Contra Costa County and Status Review Hearings*

In June 2017, Mother moved to Contra Costa County to be closer to extended family. Mother moved in with her former sister-in-law. The other occupants of the house were the former sister-in-law’s mother (L.P.) and sister, as well as three children. Mother obtained full-time employment as a cashier. On July 12, 2017, the Contra Costa

County Juvenile Court accepted transfer of the three cases. In August 2017, the children were moved from Butte County to a foster family in Contra Costa County. The children were initially placed together, but A.K., the youngest child, was subsequently moved to a separate foster home.

In its six-month status review report, the Contra Costa County Children & Family Services Bureau (Bureau) recommended termination of reunification services for the father, but recognized Mother's "recent efforts and commitment to reunify since moving to Contra Costa County." "While [Mother] is currently engaged in parenting and individual therapy, the Bureau does not believe that she is ready to receive the children in her care at this time as she only recently started services in August. [Mother] would also benefit from time to develop a more concrete plan for providing daily care for the children Her therapist . . . believes that [she] is beginning to understand and take responsibility but he also pointed out that her insight is low and she doesn't see things the way other[s] see them. She could also benefit from the extension of services so that she can continue to work on her feelings of depression"

Mother continued to test negative for drug use, but the Bureau expressed concern that Mother "continues to need a great deal of assistance during weekly visits to manage the children's behavior and meet their physical and emotional needs." The Bureau worried about Mother's "level of comprehension and service providers suspect some developmental delay, although [Mother] denies she has a diagnosis of developmental delay."

At the six-month review hearing, the court terminated the father's reunification services. However, the court found Mother made "some progress in resolving [the] problems that led to the children's removal from the home." Finding a substantial probability the children would be returned to Mother's physical custody at the next hearing, the court scheduled a 12-month review hearing.

In its 12-month status review report, the Bureau recommended the continuation of reunification services for Mother, who had "maintained a consistent schedule and [had] met all her requirements with drug testing, individual therapy, and visitation." Mother

was up for a promotion at her job to head cashier. Mother “and her relative supports have been working together to prepare the home for the potential return of the children.”

However, the Bureau could not recommend reunification at this time: Mother’s “relative supports, her therapist, . . . and the visitation supervisors all agree that [Mother] needs continued support in order to maintain safe placement of the children.”

At the 12-month review hearing, the court found Mother made some progress in resolving the problems that led to her children’s removal, and the court found there was some evidence the children could be returned to her custody by August 2018 if reunification services were extended. The court ordered the agency could authorize overnight visits and scheduled an 18-month review hearing.

In its 18-month status review report, the Bureau recommended that Mother continue receiving family maintenance services on behalf of her two older children, L.K. and N.K., but the Bureau recommended termination of services on behalf of A.K. According to the Bureau, Mother “is more successful with the two older children . . . who are more independent and able. [Mother] continues to struggle learning how to manage the special needs of [A.K.] who is a Regional Center client.” Due to her developmental delays, A.K. was receiving “weekly speech therapy, weekly physical therapy, and weekly special instruction with a Developmental Teacher.” The Bureau was not confident Mother could meet A.K.’s special needs, “even with her current family support, given her own learning disability and having to raise [A.K.’s] siblings who are close in age and who also have some emotional needs of their own.”

The 18-month report noted Mother participated in a psychological evaluation, which found she was not intellectually disabled, but she met the “criteria for a diagnosis of Moderate Specific Learning Disorder.” Mother “experiences challenges with . . . mathematical reasoning and processing speed that have led to significant interference with occupational performance and occasional challenges with daily living.”

At the 18-month review hearing, the juvenile court declined to follow the Bureau’s recommendation, finding “extraordinary circumstances” justified extending family maintenance services to 24 months to permit “a more thoughtful transition toward

reunification.” The court authorized overnight visits between the children and Mother and scheduled a 24-month review hearing.

In its 24-month review report, the Bureau recommended termination of Mother’s reunification services for all three children based in part on an injury sustained by the oldest child, L.K. “On September 19, 2018, a referral was made to the Child Protective Services regarding a mark on [L.K.’s] back When the foster mother asked what happened [L.K.] reported ‘*Grandmother is mean and give [N.K.] and I pow pows.*’ There was no disclosure . . . [regarding] what ‘*pow pows*’ meant. The foster mother took [L.K.] to Urgent Care . . . when the mark was discovered. The diagnosis was listed as a ‘*contusion of the trunk.*’ An investigation was completed and the allegation of General Neglect was substantiated.”

The foster mother discovered the “significant bruise across [L.K.]’s lower back” after L.K. returned from an overnight visit with Mother. Mother “originally said that she was upset that no one told her about the mark on [L.K.]’s back, and then gave several ways [L.K.] could have received the mark at her home (i.e. falling when walking back from the park and [L.K.] sitting on a broken chair). Then [Mother] told the investigator that [L.K.] told her that the foster mother’s child had caused the mark. After the mother stated that she had observed the mark she did not . . . take the child to the emergency room or urgent care to have the child assessed.” The Bureau expressed concern that if Mother did observe the bruise, then she should have contacted her social worker, or taken the child to the emergency room, or raised the matter at a team meeting held the day after the overnight visit.

The Bureau stated that even after 24 months, it continued “to have concerns regarding [Mother’s] ability to parent the children. [Mother’s] ability to pay attention to and monitor her children’s health, safety, and well-being continues to be an ongoing concern since the beginning of this case. . . . The Bureau has made every effort to provide [Mother] with services, support, and guidance in regards to providing care to her children. . . . The incident that occurred in September, 2018, is another example . . . that the mother is challenged with keeping the children safe from harm.” The Bureau

recommended termination of reunification services between Mother and all three children.

III. *Contested 24-month Status Review Hearing*

The court held a contested hearing on January 30, 2019, and February 13, 2019, hearing testimony from a social worker, the grandmother with whom Mother resided (L.P.), and Mother.

The social worker explained the three children began overnight visits with Mother, but the visits were stopped after L.K. returned from a visit with a “significant bruise” on her back. An emergency response worker determined it occurred in Mother’s home, but the worker could not substantiate physical abuse, instead finding “general neglect from lack of supervision.” The social worker testified the Bureau remained concerned “about the mother’s ability to manage the three children, her judgment in terms of the decisions she makes . . . [for] her children, their safety, and the people that she’s allowing them to have interaction with.” L.K. said she received the bruise from “[g]randma pow-pow,” who she described as “mad, sad and mean.”

During a supervised visit, one of the children was observed stuffing grapes into the other’s mouth. During a community visit, it was observed that the two older children were at risk of wandering into the street while Mother put A.K. in a car seat.

The grandmother, L.P., testified at the hearing. According to L.P., L.K. did not complain about pain or injury during her last overnight visit. L.P. claimed the injury did not occur in her home, but she also stated she did not see L.K.’s back. L.P. testified “[p]ow-pow means when you give them a spanking,” but she denied spanking the children. She claimed L.K. learned the term when asked if anyone gave her a “pow-pow.” L.P. did not believe A.K. had any developmental delays, stating A.K. was “just a normal child growing up and just trying to catch up to her age.”

Mother claimed the bruise she observed on L.K.’s back did not resemble the one in the photograph provided to the court, and L.K. told Mother one of the foster parent’s children gave her the bruise. L.K. was not bleeding and she did not require any kind of

first aid. Mother claimed no one in her house used physical discipline. Mother did not mention the bruise at a meeting the following day because she “didn’t get a chance to.”

With regard to the other incidents that called into question Mother’s judgment, Mother testified she noticed one of the children was stuffing grapes in the other’s mouth at the same time as the social worker, and she knew the visitation supervisor would not let her children wander into the street while she attended to a car seat. Mother denied the report that, in Butte County, she considered leaving her children with a neighbor who was drunk. Mother was not concerned about L.K.’s statement that L.P. was “mean” because Mother had seen them interact and L.P. was never alone with the children. Mother stated she and L.P. used the term “pow-pow” to mean to “hit or spank.” Mother claimed the term was used in a question: when the girls were fighting, the grandmother asked one of them, “ ‘Did you get a pow-pow?’ ”

After hearing the testimony and arguments from counsel, the juvenile court stated the case was a difficult one because Mother “has worked very, very hard to reunify with the children,” but after two years of reunification services, Mother still lacked “judgment and ability.” The court did not find credible Mother’s claims regarding the bruise, which was large and extended down part of L.K.’s back. Mother revealed a “lack of insight” when she did not realize that social workers were evaluating how she would handle the three children on her own. The court found that Mother’s extended family could not be relied upon to help out because the grandmother denied that A.K., the youngest child, had any issues even though she is a “special needs child.” The court found there was evidence that “returning the children to the custody of mother today would create substantial risk and detriment” to their well-being.

Based on this evidence, the court terminated reunification services for Mother and set a .26 hearing for June 12, 2019. Mother petitions this court for extraordinary relief.

DISCUSSION

Mother contends there was not substantial evidence that returning her three children to her care would create a substantial risk of detriment to their well-being. She argues she “started in an unfit transient household in Butte County and for two years

climbed all the way up to the top of a mountain to reunify with her children only to have the Bureau push her off because of a bruise.” We disagree.

I. *Governing Law and Standard of Review*

At a 24-month review hearing, the juvenile court must return children to the physical custody of a parent “unless the court finds, by a preponderance of the evidence, that the return” “would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child[ren].” (§ 366.25, subd. (a)(1).) The detriment standard is “ ‘a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.’ It must mean what it says: that return presents a *substantial* risk of detriment to the child.” (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 505.) “We are looking for passing grades here, not straight A’s.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.)

We will uphold a juvenile court’s detriment finding if it is supported by substantial evidence. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400–1401.) “In so doing, we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order. [Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value [Citation.] In the absence of substantial evidence showing such detriment, the court is required to return the minor to parental custody.” (*Id.* at p. 1401.)

II. *Substantial Risk of Detriment to the Children*

Here, substantial evidence supports the juvenile court’s finding of a substantial risk of detriment to the children. Mother was making progress toward reunification with her children. Indeed, Mother had progressed to the point where the Bureau permitted overnight visits between Mother and her children. However, in September 2018, upon her return from an overnight visit, the foster parent noticed a significant bruise on L.K.’s back. The foster parent took L.K. for a medical evaluation the same day and the “diagnosis was listed as a ‘*contusion of the trunk.*’ ”

In her petition, Mother contends the bruise “did not require medical attention, not even a band aid.” But the record contains a photograph of the bruise, which supports the court’s determination that it was large and a significant cause for concern. While the emergency response worker could not substantiate physical abuse, the worker found “general neglect from lack of supervision.” Based on this evidence, it was reasonable for the juvenile court to find that returning the children to Mother posed a substantial risk of detriment to their safety, protection, and well-being. (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419 [“If there is substantial evidence supporting the judgment, the court’s order must be affirmed.”].)

Mother contends the juvenile court terminated reunification services “because of a bruise.” But the juvenile court was also troubled by Mother’s inconsistent statements regarding the bruise, which were symptomatic of her “lack of judgment and ability.” The court did not find credible Mother’s claim that the bruise she observed did not resemble the one shown in the photograph, or her view that the foster parent’s son caused the bruise. The child’s statement that L.P., the grandmother, was mean and gave “pow pows” was a “red flag” for the court, which was disturbed by Mother’s lack of concern regarding “the pow-pow issue.” (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242 [“[w]e do not reweigh the evidence or make credibility determinations”].)

In addition, Mother exhibited a similar lack of insight when she did not appreciate that social workers were evaluating her ability to be safe with the children by herself in the community. The incidents that concerned the social worker included Mother’s failure to attend to two of the three children while putting the youngest child, A.K., into a car seat, and an incident when one child was observed stuffing grapes in the other’s mouth. The court also doubted Mother’s account of her alleged decision to leave the children with a drunk neighbor in Butte County. While Mother had a support group in Contra Costa County, the court was concerned that L.P., the grandmother, did not appreciate the significance of A.K.’s developmental problems.

Mother contends that “substantial compliance with a case plan may be enough to overcome a finding of substantial risk of detriment.” We disagree. “[S]imply complying

with the reunification plan . . . is not determinative. The court must also consider the parents' progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated." (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) Here, the examples of Mother's lack of judgment and ability support the juvenile court's finding that, even after 24 months of reunification services, returning the children to Mother posed a substantial risk of detriment to their safety, protection, and well-being. (§ 366.25, subd. (a)(1).)

DISPOSITION

Mother's petition seeking extraordinary relief is denied on the merits. The request for a stay of the .26 hearing is denied as moot. This decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Jones, P.J.

WE CONCUR:

Simons, J.

Needham, J.

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